

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BLACK LIVES MATTER SEATTLE-KING
COUNTY, ABIE EKENEZAR, SHARON
SAKAMOTO, MURACO KYASHNA-
TOCHA, ALEXANDER WOLDEAB,
NATHALIE GRAHAM, and ALEXANDRA
CHEN,

Plaintiffs,

v.

CITY OF SEATTLE,

Defendant.

NO. 2:20-cv-00887

DEFENDANT'S RESPONSE TO
PLAINTIFFS' MOTION FOR
ATTORNEY'S FEES AND COSTS

Noted on Motion Calendar:
Friday, December 25, 2020

Court Ordered Response:
Friday, December 18, 2020

DEFENDANT'S RESPONSE TO
PLAINTIFFS' MOTION FOR ATORNEY'S
FEE AND COSTS (2:20-cv-00887 RAJ) - 1

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1 **I. RELIEF REQUESTED**

2 The City respectfully requests that this Court deny Plaintiffs' request for \$263,708.50 in
3 fees and costs. Plaintiffs' hourly rates are high; they seek recovery for clerical, duplicative, and
4 unrecoverable tasks; and they only prevailed on four of 122 uses of force.

5 **II. STATEMENT OF FACTS**

6 Plaintiffs' September 30, 2020 motion for contempt was based on allegedly improper CCW
7 deployments over the span of four separate dates: August 26 and September 7, 22, and 23, 2020.
8 (Dkt. 114.) Plaintiffs submitted 19 witness declarations. (Dkt. 116-134.) This Court did not find
9 any contemptuous conduct on August 26. (Dkt. 161.) The Court held that the blast ball
10 deployment on September 22 violated the injunction. (*Id.*) Plaintiffs submitted only two
11 declarations regarding that deployment. (Dkts. 131 & 132.) The Court based its findings of
12 contempt with respect to a September 7 OC spray deployment, a September 7 blast ball
13 deployment, and September 23 blast ball deployment based solely on video evidence and draft use
14 of force reports submitted by the City. (Dkt. 161.) Not one of the 19 declarations pertained to
15 the CCW deployments that formed the basis for the contempt findings on September 7 and
16 September 23. (*Id.*) Also, many of the time entries for which counsel for plaintiffs seek
17 reimbursement was either not related to the September 7, 22, or 23 deployments at issue,
18 duplicative of other attorney work, block billed, or clerical in nature. (See Christie Decl., filed
19 herewith and incorporated by this reference.)

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III. ARGUMENT AND AUTHORITIES

A. Plaintiffs' Counsels' Hourly Rates Are Inflated.

To determine a reasonable hourly rate, the lodestar approach “looks to the prevailing market rates in the relevant community” and is meant to roughly approximate “the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable case.” *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 551, 130 S. Ct. 1662 (2010) (internal citations omitted). These billing rates “should be established by reference to the fees that private attorneys of an ability and reputation comparable to that of prevailing counsel charge their paying clients for legal work of similar complexity.” *Welch*, 480 F.3d at 946 (internal citations omitted). Generally, “the relevant community is the forum in which the district court sits.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). The Court may rely on its own familiarity with the legal market in setting a reasonable hourly rate, and it should also consider the experience, skill, and reputation of the attorney requesting fees. *Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011); *Schwarz v. Sec’y of Health & Human Servs.*, 73 F.3d 895, 906 (9th Cir. 1995). Courts may also consider rate determinations in other cases. *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

Mr. Perez requests \$785 an hour for his work in this case. Dkt. 167 at ¶4. However, Mr. Perez has served as counsel for the City of Seattle Community Police Commission, on similar issues at a rate of \$515/hr. (Declaration of Ghazal Sharifi at ¶ 2, Ex. A.) The rate for his associate, Anna Thompson, who graduated from law school in 2015, is \$350.¹ *Id.* Mr. Perez seeks to increase his

¹ <https://www.perkinscoie.com/en/professionals/anna-thompson.html>

1 hourly rate by \$270 for substantially similar work. *Compare, id.* and Dkt. 167 at ¶4. Mr. Perez was
 2 awarded fees in a pro-bono case of \$575 per hour. Sharifi Decl., Ex. B. In *Wagafe v. Trump*, Cause
 3 No. 2:17-cv-0094, Dkt. 356, this Court awarded partial fees in connection with a request for sanctions,
 4 with Mr. Perez at a rate of \$575 an hour. *Id.* Perkins Coie noted that it was a pro-bono case and it
 5 was utilizing its lowest standard rates, because the firm was not billing its clients for their work. *Id.*
 6 at Ex. C at ¶ 8. Mr. Perez does not make such an attestation on behalf of their firm in this case. Dkts.
 7 167-168. Therefore, it is presumed that the requested rates of the Perkins Coie firm are its higher
 8 standard billing rates typically charged to for-profit corporations and not, a lower rate charged to
 9 public entity clients for similar work.

10 Mr. Perez attests to hourly rates ranging from \$555 to \$270 for associates whose experience
 11 level ranges from zero to four years. Dkts. 167 and 168. None have practiced in the field of civil
 12 rights. Ms. McGill, Mr. Butler, and Ms. Hoerberlein only graduated this past spring, and were licensed
 13 in September, October, and August 2020 respectfully.² *Id.* at ¶¶ 11-13, Exs. G-I. For these attorneys,
 14 with no civil rights litigation experience, Mr. Perez seeks rates of \$435 (for Ms. McGill and Mr.
 15 Butler) and \$270 for Ms. Hoerberlein. *Id.* at ¶¶ 11-13. Ms. Nowlin requests \$400 an hour for her
 16 work, and \$500 an hour for the work of Molly Tack-Hooper. Dkt. 169. She notes experience serving
 17 as counsel on cases in the Western District beginning in 2019. *Id.* at ¶ 4. Ms. Tack-Hooper joined the
 18 ACLU in 2013, initially in Philadelphia, before relocating to the Seattle office in November 2019. *Id.*
 19 at ¶¶ 6-7. Finally, Professor Chang³ seeks an hourly rate of \$650. Dkt. 170, ¶¶ 3, 11. In support of

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 21 ² It is unclear whether these attorneys have been admitted to practice in the Western District.

³ Professor Chang has been teaching law since he graduated in 1992. In addition to teaching, Professor Chang serves as the Executive Director of the Korematsu Center at Seattle University School of Law, which he founded in

1 this request, Professor Chang cites to a single case in which plaintiffs were awarded costs and fees,
 2 *Gonzales v. Douglas*, 269 F. Supp. 3d 948 (D. Ariz. 2017). *Id.* at ¶ 8. However, that case settled. *Id.*
 3 at ¶ 9. A Court has never awarded fees to Professor Chang at an hourly rate of \$650. None of the
 4 other attorneys seeking fees have more than 11 years of experience.

5 Plaintiffs' requested hourly rates are far above what other attorneys in this District with
 6 similar skill and experience have been awarded. *See, Wingate v. City of Seattle*, No. 15-822, 2017
 7 WL 1710945 (May 3, 2017) (Vonda Sargent, \$325/hr; Susan Mindenbergs, \$375/hr); *Morales v.*
 8 *City of Seattle*, No. C12-2235-JCC, 2014 WL 12029285, at *4 (W.D. Wash. Dec. 19,
 9 2014), *aff'd*, 873 F.3d 817 (9th Cir. 2017) (Darryl Parker, over 35 years civil rights experience,
 10 awarded \$370/hr after request for \$500/hr); *Afinwala v. La Trelles Express, Inc.*, C16-1707 RSM,
 11 2017 WL 1398925 (W.D. Wash. Apr. 19, 2017) (awarding between \$305 and \$485 an hour to five
 12 separate attorneys); *Knickerbocker v. Corinthian Colleges*, C12-1142JLR, 2014 WL 3927227
 13 (W.D. Wash. Aug. 12, 2014) (awarding between \$300 and \$450 an hour);

14 Given the experience of Mr. Perez, Ms. Tack-Hooper, and Professor Chang, the City
 15 respectfully recommends an hourly rate no higher than \$400.00 per hour. With respect to Ms.
 16 Nowlin, the City recommends an hourly rate no higher than \$300.00 per hour. Finally, with respect
 17 to Ms. Gilbert, Ms. Haney, Ms. Arora, Ms. Dallal, and Ms. Whidbee, the City recommends a rate
 18 of no more than \$250.00 per hour, and no more than \$200.00 per hour for Ms. McGill, Mr. Butler,
 19 and Ms. Hoeberlein, who all graduated from law school this past spring and were licensed this fall.

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 2009, and supervises students in the Civil Rights Clinic. Based on Professor Chang's attestation, it appears his
 practice as an advocate in state and federal courts began with the Korematsu Center in 2009.

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1 Plaintiffs' make no showing a rate of \$290 per hour for paralegals/staff is reasonable. Dkt. 168 at ¶
 2 7. Though Mr. Williams cites to a single paralegal at that rate, plaintiffs have billed for two paralegals
 3 at rates of \$295/hr and \$285/hr. Moreover, a declaration from a partner at Mr. Perez's own law firm,
 4 who has an interest in the outcome of the fee award, is of little value. The Court should set a rate of
 5 no more than \$100 an hour for administrative staff.

6 **B. Plaintiffs Should Not Recover Fees for Unnecessary, Duplicative, or Clerical Work.**

7 Plaintiffs bear the burden of documenting the hours expended and must submit evidence
 8 supporting those hours and the rates claimed. *Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942,
 9 945-46 (9th Cir. 2007) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct. 1933 (1983)).
 10 "Where the documentation of hours is inadequate, the district court may reduce the award
 11 accordingly." *Hensley*, 461 U.S. at 434. With respect to the number of hours billed, the Court
 12 should exclude from the initial fee calculation hours not "reasonably expended." *Hensley*, 461 U.S.
 13 at 434. Counsel for the prevailing party should make a good faith effort to exclude from a fee
 14 request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private
 15 practice ethically is obligated to exclude such hours from his fee submission. *Id.* Courts may
 16 reduce fee awards when block billing makes it impossible to determine whether the time spent on
 17 each task was reasonable. *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007).

18 After assessing reasonable rates, the Court should exclude from consideration the
 19 highlighted hours set forth in the Christie Declaration, because they are not recoverable.
 20 Additionally, recovery of fees for 12 attorneys working on this case is redundant and excessive.

1 **C. Plaintiffs Narrowly Prevailed.**

2 Once the Court determines the appropriate rates and excludes nonrecoverable time, it
 3 should reduce the final award to account for Plaintiffs' limited success. "[T]he extent of a
 4 plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's
 5 fees" under § 1988. *Hensley*, 461 U.S. at 440, 103 S. Ct. 1933. There is a two-step process for
 6 determining the appropriate reduction for limited success: (1) whether plaintiff failed to prevail on
 7 claims that were unrelated to the claims on which he succeeded; and (2) whether the plaintiff
 8 achieved a level of success that makes the hours reasonably expended a satisfactory basis for
 9 making a fee award. *Webb v. Sloan*, 330 F.3d 1158, 1168 (9th Cir. 2003) (internal cites omitted).

10 The district court should properly consider "the relationship between the amount of the fee
 11 awarded and the results obtained," *Hensley*, 461 U.S. at 437, 103 S. Ct. 1933, and reduce the
 12 "attorneys fee award so that it is commensurate with the extent of the plaintiff's
 13 success." *Yonemoto v. Shulkin*, 725 Fed. Appx. 482, 485 (9th Cir. 2018) (internal citations
 14 omitted). Plaintiffs based their motion on SPD's actions on four separate demonstrations.
 15 However, the Court did not find any violations on August 26, 2020. Further, of the events
 16 Plaintiffs actually complained of and supported with evidence, they only prevailed on one – the
 17 September 22, 2020 blast ball. The Court based its other three contempt findings on evidence
 18 submitted by the City. Moreover, over those four demonstrations, there were 122 Less Lethal
 19 Weapon deployments documented in the draft Blue Team reports submitted by the City. Plaintiffs
 20 only prevailed on four of them, for a success rate of less than 5%. The Court should reduce
 21 Plaintiffs' otherwise recoverable fees accordingly to reflect Plaintiffs' narrow success.

1 DATED this 18th day of December, 2020.

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